

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GAIL MICHELMAN,

Plaintiff,

v.

LINCOLN NATIONAL LIFE INSURANCE
COMPANY, *et al.*,

Defendants.

No. C10-0271RSL

ORDER GRANTING LINCOLN'S
MOTION FOR SUMMARY
JUDGMENT ON IRWIN
MICHELMAN'S COUNTERCLAIMS

This matter comes before the Court on Lincoln National Life Insurance Company's "Motion for Summary Judgment on Third Party Defendant's Claims." Dkt. # 69. Having reviewed the memoranda, declaration, and exhibits submitted by the parties,¹ the Court finds as follows:

FACTUAL BACKGROUND

On March 24, 1999, third party defendant Irwin Michelman submitted an application for a life insurance policy covering his daughter, Elizabeth. At the time, Elizabeth

¹ Pursuant to Local Civil Rule 7(b)(4), a "party desiring oral argument shall so indicate by typing ORAL ARGUMENT REQUESTED in the caption of its motion or responsive memorandum." Lincoln's request for oral argument, which was raised for the first time in reply, is untimely. Because the Court finds that this matter can be determined on the papers submitted, the request for oral argument is DENIED on both procedural and substantive grounds.

ORDER GRANTING LINCOLN'S MOTION
FOR SUMMARY JUDGMENT ON IRWIN
MICHELMAN'S COUNTERCLAIM

1 was eleven years old, and Irwin was married to Elizabeth's mother, Gail Michelman. Pursuant
2 to the application, both Irwin and Gail were designated as beneficiaries under the policy. Irwin
3 identified Gail as the "Owner" of the policy and himself as "Contingent owner." Although the
4 form provided space for only one "Owner" and there was no place to identify a "Primary
5 owner," the application noted that:

6 If two or more Primary owners are named, complete special instructions and check
7 applicable block:

8 ☐ Joint owners with right of survivorship between them

9 ☐ Common owners with no right of survivorship between them

10 Irwin checked the "Joint owners" box, but did not provide special instructions. The life
11 insurance policy took effect on April 6, 1999. On or about May 28, 1999, Lincoln generated a
12 "Policy Summary" that identified Gail as the "Primary Owner" and Irwin as the "Contingent
13 Owner." There is no indication that Irwin contested these designations.

14 Gail and Irwin divorced in 2001. On February 14, 2002, Gail submitted a Change
15 of Beneficiary form to Lincoln pursuant to her authority as "Owner" of the contract. The change
16 removed Irwin as a beneficiary and added the couple's other daughter, Jessica. Irwin has
17 asserted a breach of contract claim and a declaratory judgment claim against Lincoln based on an
18 alleged failure to follow the policy terms regarding a change in beneficiary.

19 DISCUSSION

20 The policy at issue in this litigation gives the power to change the designated
21 beneficiary to the "Owner." The "Owner" is defined as the person identified as such in the
22 application. Dkt. # 18-2 at 6. Irwin does not dispute that Gail was designated in the application
23 as the "Owner" of the contract. Instead, he asserts that he was also an "Owner" of the policy and
24 leaps to the conclusion that "if there were joint owners, the consent of both was required."
25 Opposition (Dkt. # 79) at 4. No policy provision or legal authority is provided in support of this
26

1 conclusory statement. Nor did Irwin provide special instructions indicating that mutual consent
2 was required in order to change the beneficiary. Even if the Court assumes that both Gail and
3 Irwin were "Owners," the form contract allows either of them to change the beneficiary as long
4 as certain conditions precedent and procedures were met. Absent a contract provision requiring
5 the consent of multiple, joint, or contingent owners, the failure to obtain such consent is not a
6 breach.

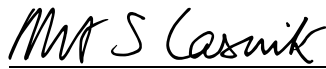
7 Irwin also argues that Lincoln breached the policy provision requiring that a
8 request to change the beneficiary designation be made in writing. Irwin inexplicably ignores the
9 written "Change of Beneficiary" form submitted by Gail on February 14, 2002 (and attached to
10 counsel's declaration as Ex. 3).

11 Finally, Irwin mentions that Lincoln failed to give him notice of the change in
12 beneficiary. He does not identify any policy provision requiring such notice or explain how
13 delivery of the notice to his last known address constitutes a breach of contract.

14 CONCLUSION

15 For all of the foregoing reasons, Lincoln's motion for summary judgment on
16 Irwin's counterclaims is GRANTED. The breach of contract and declaratory judgment claims
17 asserted by Irwin Michelman against Lincoln National Life Insurance Company are hereby
18 DISMISSED.

19
20 Dated this 10th day of February, 2011.

21 
22 Robert S. Lasnik
23 United States District Judge
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